Great Lakes Coal Company *and* United Mine Workers of America, District 11, affiliated with United Mine Workers of America. Cases 25-CA-14038 and 25-CA-14287

28 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 1 April 1983[1] Administrative Law Judge James J. O'Meara Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed limited cross-exceptions and an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions.[3]

[1] The judge's decision is erroneously dated 1 April 1982 rather than 1 April 1983. We hereby correct this inadvertent error.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Garyl Griffith's given name frequently appears in the judge's decision as "Daryl." We hereby correct the inadvertent error.

[3] In the absence of exceptions, we adopt, pro forma, the judge's conclusion that the Respondent violated Sec. 8(a)(1) of the Act by suggesting to employees that it would be futile for the Union to attempt to organize its facility.

In support of his conclusion that the Respondent violated Sec. 8(a)(5) and (1) of the Act by failing to bargain in good faith with the Union, the judge stated in sec. VIII,A, par. 4, of his decision that the Respondent attended only two scheduled bargaining sessions during the 8-month period following its recognition of the Union. Review of the record, however, demonstrates that the Respondent's negotiator, Andrew Contaldi, attended three bargaining sessions—on 6 January, 27 April, and 20 May 1981—and its owner, William Burke, attended two others—on 2 December 1980 and 12 July 1981. Despite the discrepancy, the Respondent's conduct evidenced an intent to delay and frustrate the negotiating process, and we agree with the judge's conclusion that the Respondent failed to bargain in good faith.

The judge correctly found that the Respondent violated Sec. 8(a)(5) of the Act by unilaterally providing unit employees with benefits, including pay raises, Christmas bonuses, and luncheon and shower facilities, while it engaged in negotiations with the Union concerning these matters. He stated, however, in sec. VII,B, par. 3, of his decision that this conduct "cannot be said to have interfered with the employees' rights under Section 7 since the Union obtained the exclusive representation rights of these employees on November 4, 1981." We disagree with this statement because we find that the Respondent's conduct interfered with the employees' Sec. 7 right "to bargain collectively through representatives of their own choosing," and derivatively violated Sec. 8(a)(1) of the Act.

In concluding that the Respondent violated Sec. 8(a)(3) and (1) of the Act by discharging Garyl Griffith, the judge stated in sec. VIII,B, par. 4, of his decision that the Respondent knew that Griffith was prounion based on Griffith's "needling" of the Respondent's mine superintendent, Arthur Young, to the effect that working conditions at the mine would improve if the employees were represented by a union. We note that an additional source of such knowledge was employee Linden Moss' statement to Foreman Chuck Dillon during September or October 1981 that Griffith wanted a union very badly and was one of its biggest supporters.

The judge's Conclusions of Law fail to state that the Respondent violated Sec. 8(a)(1) of the Act by threatening to close its plant if the Union were to represent its employees and by informing employees that it would be futile for the Union to organize its facility, and also fail to include the Respondent's derivative violations of Sec. 8(a)(1). In order to correct these omissions and several other inadvertent errors, we shall issue new Conclusions of Law.

The General Counsel excepted to the judge's failure to provide in his recommended Order a remedy for the Respondent's violations of Sec. 8(a)(1) of the Act, as follows: threatening to close the Linton mine if the employees selected a union to represent them; telling employees it would be futile for the Union to attempt to organize them; and promising and granting benefits to employees to induce them not to support the Union. We find merit in this exception. Accordingly, to correct these and other inadvertent errors, we shall issue an order in lieu of that recommended by the judge.

[4] The unit description, which the Respondent does not contest, appears as in the General Counsel's complaint.

CONCLUSIONS OF LAW

1. Great Lakes Coal Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Mine Workers of America, District 11, affiliated with United Mine Workers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees of the Respondent employed at its Linton, Indiana facility; BUT EXCLUDING all office clerical employees, all guards and all supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.[4]

4. Since 4 November 1981, and at all times thereafter, the Union has been and is now the exclusive representative of all the employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By threatening employees that it would close its facility if the Union were to represent them for the purpose of collective bargaining, by informing employees that it would be futile for the Union to attempt to organize them, and by promising to provide its employees with an insurance program and a coal production bonus, and awarding employees a coal production bonus, in order to induce them not to support the Union, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 of the Act in violation of Section 8(a)(1) of the Act.

6. By discharging employee Garyl Griffith for joining, supporting, or assisting the Union, and engaging in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, the Respondent has engaged in unfair labor

practices in violation of Section 8(a)(3) and (1) of the Act.

7. By refusing to bargain in good faith with the Union as the exclusive representative of the employees in the aforesaid appropriate unit, and by unilaterally providing its employees with a lunch facility, a washhouse, a Christmas bonus, and pay raises, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Great Lakes Coal Company, Linton, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with United Mine Workers of America, District 11, affiliated with United Mine Workers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees of the Respondent employed at its Linton, Indiana, facility; BUT EXCLUDING all office clerical employees, all guards and all supervisors as defined in the Act, and all other employees.

(b) Without notice to or bargaining with the Union as the exclusive bargaining representative of the employees in the unit providing the employees with a lunch facility, a washhouse, a Christmas bonus, and pay raises, and implementing an internal job bidding procedure and a new safety training program, providing that nothing herein shall require Respondent to rescind any benefit that it has previously granted.

(c) Discharging or otherwise discriminating against any employee for supporting United Mine Workers of America, District 11, affiliated with United Mine Workers of America, or any other union.

(d) Threatening to close its facility if the Union were to become its employees' collective-bargaining representative.

(e) Promising to provide its employees with an insurance program and a coal production bonus, and awarding employees a coal production bonus, in order to induce them not to support the Union, providing that nothing herein shall require the Respondent to rescind the coal production bonus.

(f) Informing its employees it would be futile for the Union to organize them.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Offer Garyl Griffith immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Make Garyl Griffith whole for any loss of earnings and other benefits suffered due to the discrimination against him by paying him a sum equal to what he would have earned absent such discrimination, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon to be computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977).[5]

(d) Remove from its files any reference to the unlawful discharge and notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

(e) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its Linton, Indiana facility copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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[5] See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[6] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Mine Workers of America, District 11, affiliated with United Mine Workers of America, as the exclusive representative of the employees in the following appropriate unit:

> All production and maintenance employees employed by us at our Linton, Indiana, facility; BUT EXCLUDING all office clerical employees, all guards and all supervisors as defined in the Act, and all other employees.

WE WILL NOT without notice to or bargaining with the Union as the exclusive bargaining representative of our employees in the unit provide our employees with a lunch facility, a washhouse, a Christmas bonus, and pay raises, and implement an internal job bidding procedure and a new safety training program; however, we are not required to rescind any benefit that we have previously granted.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting United Mine Workers of America, District 11, affiliated with United Mine Workers of America.

WE WILL NOT threaten to close our facility if the Union were to become our employees' collective-bargaining representative.

WE WILL NOT promise to provide our employees with an insurance program and a coal production bonus, and award employees a coal production bonus, in order to induce them not to support the Union, providing that nothing herein shall require us to rescind the coal production bonus.

WE WILL NOT inform our employees it would be futile for the Union to organize them.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment.

WE WILL offer Garyl Griffith immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Garyl Griffith whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL notify him that we have removed from our files any reference to his discharge and that the discharge will not be used against him in any way.

GREAT LAKES COAL COMPANY

DECISION

STATEMENT OF THE CASE

JAMES J. O'MEARA JR., Administrative Law Judge: This matter arises as a result of a consolidation of two amended complaints based upon specific charges filed by one Garyl L. Griffith and the United Mine Workers of America, District 11, affiliated with United Mine Workers of America, respectively. The amended complaint in Case 25-CA-14038 alleges that the Respondent threatened to close its facility because its employees joined and assisted the Union and that the Respondent promised benefits to its employees in order to induce them to refrain from joining and assisting the Union; granted benefits in order to induce its employees to refrain from joining and assisting the Union; told its employees that union agents could be bought; threatened that it would be futile for them to select a union to represent them; and discharged its employee Garyl L. Griffith because of his engagement in concerted activities for the purpose of collective bargaining or other mutual aid or protection, all in violation of Section 8(a)(1) and (3) of the Act.

In Case 25-CA-14287 the amended complaint alleges that the Respondent designated the Union as the exclusive bargaining representative of the Respondent's employees and that such Union is, and at all times material herein was, the exclusive representative of the employees for such purposes, and, further, that the Respondent has failed and refused to meet and bargain with the Union; has granted improvements in working conditions, such as the establishment of a lunchroom facility, the institution of a safety program, and the providing of a washhouse facility; has granted bonuses and pay increases; and has instituted a policy of internal job offers to employees prior to the hiring of new employees for such jobs and that such conduct comprises a failure and refusal to bargain collectively in good faith with the union in violation of Section 8(a)(1) and (5) and Section 8(d) of the Act.

By its answer the Respondent admits the identity and jurisdictional allegations of both complaints.[1] The Re-

[1] The Respondent's answer to the complaint in Case 25-CA-14038 denies, inter alia, the allegation that it is an Indiana corporation. However, in its answer to the complaint in Case 25-CA-14287 it admits such identity. Accordingly, it shall be deemed that the allegations as to the corporate status of the Respondent have been admitted.

spondent also denies that it has violated the Act and affirmatively alleges that the discriminatee, Garyl L. Griffith, was discharged because of poor job performance and denies that it had any knowledge of his union activity until subsequent to Griffith's discharge and thus his discharge was not because of his union activities. The Respondent also counterclaims for reimbursement for attorney fees, legal fees, and other expenses.[2]

The cases were heard in Terre Haute, Indiana, on July 27–29, 1982. The parties waived oral argument and have filed briefs which have been received and considered.

On the evidence of record, the demeanor of the witnesses, and the briefs of counsel, I make the following

FINDINGS AND CONCLUSIONS

I. JURISDICTION

The Respondent, Great Lakes Coal Company, is an Illinois corporation duly authorized to do business in the State of Indiana. It is, and has been, engaged in the business of mining and selling coal since 1978 and maintains an office and place of business at Linton, Indiana, where it engages in the mining, processing, sale, and distribution of coal. During the past year the Respondent, in the course and conduct of its business, has caused coal to be mined, processed, and shipped from its facility, which commodity is valued in excess of $50,000, directly to points outside the State of Indiana and in the course of such conduct of its business it has purchased and received at its facility products and materials valued in excess of $50,000 directly from points located outside the State of Indiana.

The Respondent admits in its pleadings and I find that the Respondent is, and at all times material herein was, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

I further find that it will effectuate the policies of the Act to assert jurisdiction in this case.

II. THE LABOR ORGANIZATION

United Mine Workers of America, District 11, affiliated with United Mine Workers of America, is an organization in which employees participate which deals with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work, and at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act.

III. PREFATORY FACTS

A. *The Linton Facility*

The Respondent has been engaged in the business of mining and selling coal since 1978. It has mined coal in several counties of Indiana. During this period, in July 1980, it opened a pit in Green County near Linton, Indiana (hereinafter called the Linton facility). At the Linton facility the Company tested for the nature and quality of the coal at that location. In September 1980, the company president negotiated for the construction of a wash plant to be used at and for the Linton facility. Construction of the wash plant began in February 1981, and was completed in July of that year. Test coal was processed through the plant beginning on August 15, 1981. On October 20, 1981, the Company accepted the wash plant from the contractor and has produced marketable coal from and after that date.

B. *The Union Entry*

The president of District 11 of the United Mine Workers of America, Larry Reynolds, contacted William Burke, the Respondent's president, in August 1981, and requested a meeting to acquire the Union's representation of the employees of the Respondent at the Linton facility. On September 9, 1981, Reynolds and four of his associates visited the mine and talked with Burke and the mine superintendent, Arthur Young. On October 6, 1981, Reynolds contacted Burke by telephone, at which time Burke refused to recognize the Union as the exclusive bargaining agent of the Respondent's employees. On October 25, 1981, the Union held its first meeting with the employees of the Respondent at the Linton facility. Eleven employees were present at the meeting and union authorization cards were signed by a majority of the Respondent's employees.

On October 26, 1981, Reynolds was advised by an employee, Daryl Griffith, that he had been fired. On that day the Union filed a petition with the National Labor Relations Board for certification as the exclusive bargaining representative of the employees at the Linton facility. On November 2, 1981, Reynolds held another meeting with the employees of the Respondent.

On November 4, 1981, Reynolds met with Burke and Andrew Contaldi, who was the Company's bargaining representative, and it was agreed in an initialed memo that the Union would be the exclusive bargaining representative of the employees of the Respondent. On November 5, 1981, Reynolds took steps to withdraw the petition for certification previously filed by the Union. The parties, as a result of the November 4 agreement for representation, arranged for negotiating sessions pursuant to such agreement and the negotiations have not, as of the date of this hearing, resulted in a contract.

IV. THE ALLEGED 8(A)(5) VIOLATIONS

On November 4, the day the Respondent agreed to the representation of its employees by the Union, Reynolds, on behalf of the Union, met with Burke and the Respondent's representative, Andrew Contaldi. They discussed the Union's national agreement and its components, particularly the pension fund. Burke told Reynolds that the Company was small and could not afford the national contract making reference to the pension fund. Burke then presented Reynolds with a proposed contract which consisted of two pages. Reynolds told them that the contract was not the typical one he usually negotiated in that it lacked details. However, he indicated that

[2] The Respondent's counterclaim for attorney fees, legal fees, and other expenses is subject to the provisions of the Equal Access to Justice Act (5 U.S.C. § 504) and Sec. 102.143, et seq., of the Board's Rules and Regulations and, therefore, is premature and is not considered in this opinion.

he was willing to agree to the first two paragraphs, which called for the recognition of the Union as the exclusive bargaining representative of the Respondent's employees. Reynolds cut off the first two paragraphs and the parties initialed and dated the same. Burke then asked Reynolds to withdraw his representation petition which he had filed previous to the November 4 meeting which he agreed to do. Burke then told Reynolds that Contaldi would be his representative for the purposes of negotiating a contract and Contaldi would be the person to deal with in that regard.

Reynolds and an employee bargaining committee prepared its contract proposals and Reynolds wrote Burke a letter on November 25, proposing dates on which the Union could present its proposals. Along with the letter was a document formalizing the parties' recognition agreement of November 4, 1981. On November 30, Reynolds called Contaldi to inform him that the Union's proposals had been prepared and they wanted to present them to him so he could have the opportunity to review them. Contaldi said he could not meet personally so Reynolds asked if Burke could accept the proposals after which dates could be set for negotiations. It was agreed that Burke would accept the proposals and Contaldi would receive copies of them.

A meeting was held on December 2, at which time the union bargaining committee presented Burke with its proposals. Reynolds also asked Burke to sign the formalized recognition agreement, but he refused. On December 7, Reynolds called Contaldi in regard to future bargaining dates and to ascertain if he had received the Union's proposals. Reynolds suggested December 15, 16, and 17 as dates for meetings and Contaldi said he would get back to him later on in the week as to his availability at that time. On December 10, he called Reynolds and said he did not think he could make it but did not give a reason, and stated he would call Reynolds the following Monday to let him know if he could make December 15, 16, and 17. However, he did not call and the parties did not meet. In the December 10 conversation, Contaldi did firmly commit to meetings on January 5 and 6, 1982. On December 29 and 31, Reynolds called Contaldi to confirm the same, but he was unable to reach him. He called Contaldi again on January 4, and Contaldi said he did not think he could make those dates because he was "fogged" in at Los Angeles. After Reynolds reminded him of his earlier commitment to those dates and his earlier cancellations of meetings, Contaldi agreed to come in on January 6 and 7, 1982.

Contaldi did meet with the Union at the Terre Haute Holiday Inn, the established meeting place, on January 6, but upon arrival immediately canceled the January 7 meeting because of alleged business back in Los Angeles. Contaldi did not have a copy of the proposals so he was given one and an opportunity to briefly go through it. The Union discussed some of its substantive proposals such as vacations, subcontracting, safety, training, job bidding, and wages, and engaged in extensive discussion on the Union's proposed pension fund. Contaldi alleged that he could not effectively discuss these issues inasmuch as he did not have any information as to what the Company was presently doing in these areas and indicated on each subject that he would have to consult with Burke and get back with the Union. Reynolds then took a recess and met with the employee bargaining committee. He told them that he did not think they were making any progress by this method of discussing their proposals without any suggestions from the Company and that they should get proposals from the Company in response to their proposals and go from there. Reynolds told Contaldi that he wanted a seniority list and the Company's contract proposals. Contaldi told Reynolds he would have the seniority list by January 13, and the parties set meetings for January 19, 20, and 21. The meeting lasted for some 2-1/2 to 3 hours.

When Reynolds did not receive the seniority list by January 13, he called Contaldi the next day but was unable to reach him. On January 15, Contaldi called Reynolds saying that he did not have the seniority list or the Company's proposals because the Company's secretary was sick. On January 18, Contaldi called and without any explanation stated he could not meet on January 19, and canceled the meeting. Reynolds protested saying it was not his understanding that the meeting was canceled and further Contaldi had made a commitment. Contaldi then countered that the proposals had not been prepared because of the secretary's continued illness, but he could meet on January 20. Reynolds then told him that he could at least come to the meeting and state his position on the issues since he should know what his proposals would be. The conversation ended with Contaldi agreeing to get back with Reynolds which he did not. Reynolds called Contaldi on January 19, in view of his statement that he could meet on January 20, and talked to his secretary, who indicated that Contaldi was out of town. Hearing this Reynolds assumed Contaldi would be at the January 20 meeting as he promised and thus made arrangements at the local Holiday Inn for the January 20 meeting set for 6:30 p.m. The union negotiating team was present at the Holiday Inn at 6:30 p.m. on January 20; however, Contaldi did not appear. Reynolds then called Burke in order to find out what had happened to Contaldi, but was unable to reach him though Reynolds knew he was registered as a guest in the hotel. Reynolds talked to Burke the next day and related to him the problems he was having reaching Contaldi and having meetings. Burke said he was unaware of any such problems but, in any event, he would contact Contaldi and have him contact Reynolds. Contaldi called Reynolds on or about January 22, and Contaldi promised Reynolds that his problems had been resolved and he was now able to negotiate. They set meetings for January 26, 27, and 28. On January 26, when Reynolds' secretary attempted to confirm the above-agreed upon dates, she was told that Contaldi was not coming. After failing to reach Contaldi on January 26 and 27, on January 28 Reynolds sent Burke and Contaldi a telegram indicating that it appeared that the Company was engaged in bad-faith bargaining as reflected by Contaldi's failure to return phone calls or meet with the Union and further that the Union would if necessary file charges with the National Labor Relations Board.

On February 2, Contaldi called Reynolds and told him there was no need to go to the Board because they could work it out. He went on to say that he wanted to talk to Burke and would get back to Reynolds by noon Friday, February 5.

On February 5, Reynolds sent two of his organizers to the Board Office to file the charges in the event he did not hear from Contaldi. Contaldi did call in the evening and apologized for his past transgressions and agreed to meet on February 16, 17, and 18. Contaldi also promised to get Reynolds the Company's contract proposals and the previously promised seniority list. On February 11, 1982, Reynolds finally received the seniority list along with a handwritten message from Contaldi saying "see you next week." On February 15, when Reynolds called Contaldi to confirm the February 16, 17, and 18 dates, Contaldi again canceled the meetings because this time he allegedly had the flu. Reynolds became upset and Contaldi said Burke would meet with the Union in his stead. Reynolds then made arrangements for the meeting at the designated place for 6:30 or 7:30 p.m. The Union's committee was present for the meeting; however, Burke did not show up, even though the Union waited some 2 to 2-1/2 hours. Reynolds then tried to contact both Contaldi and Burke but had no success in doing so. The next day, February 18, Reynolds filed the instant charge.

There was no contact with the Company with respect to negotiations for the remainder of February 1982, nor in March. On or about April 12, after almost 2 months of no contact, Contaldi called Reynolds. He told Reynolds that the hearing was rapidly approaching and he wanted to come in and get the issues resolved. He suggested that they meet on April 20. Reynolds agreed to do so but cautioned Contaldi that he did not want any of the past conduct. On the same day, Contaldi called and said he would not be in but would be in on April 27.

Contaldi did come in on April 27, and met with Reynolds that morning. Reynolds again told Contaldi that he did not believe that he was sincere about negotiating a contract, but was merely "stringing" him along. Contaldi at this time presented Reynolds with the Company's contract proposals. The proposals were essentially the same ones presented to the Union at the first meeting on November 4, 1981. Reynolds, who had another meeting scheduled, told Contaldi he would be back later that evening to talk to Contaldi about the contract proposals. Reynolds returned to the Holiday Inn later that evening; however, in 4 hours he spent about 5 minutes with Contaldi, who was busy making and returning phone calls. Contaldi told him he would get back to him later. Thus, there was no discussion of the Company's "new" contract proposals.

Sometime apparently in early May the Respondent requested another postponement of the hearing from June 1 to 28. However, the Acting Regional Director in a letter dated May 14 denied the request and instead moved the hearing date to May 24. Contaldi called Reynolds on May 14, and indicated that he wanted to come in and negotiate before the hearing. On May 17, Contaldi called Reynolds and the dates of May 20 and 21 were confirmed. The parties did meet on May 20, and, although subjects such as wages, the pension fund, holidays, vacations, etc., were addressed, Contaldi's response to most of these issues was that he would get back to the Union on the proposals. At the end of the meeting, which lasted about 2 hours, Contaldi told Reynolds he would get the Company's proposals to Reynolds and would call him on June 2. The parties did not meet as planned on May 21 because Contaldi had to leave town. Contaldi did not call Reynolds on June 2 as promised, but did reach him on June 3. He told Reynolds that he would get the Company's proposal to him in a few days. After failing to reach Contaldi on June 9, Reynolds did "catch" him on June 10. Contaldi said he had been talking with Burke and he would get some proposals together and get with Reynolds and hoped to have the contract wrapped up by June 22. He went on to say he would contact Reynolds the following week. The hearing had been rescheduled from May 24 to July 27 on June 9, 1982.

Contaldi did not call the next week and, on June 24, Reynolds called Contaldi but could not reach him. On June 25, Contaldi told Reynolds he wanted to come to Terre Haute in July and further he would have the Company's proposals to Reynolds in a few days. Contaldi called again on July 6, and indicated that he wanted to come in on Monday, July 12, and that he was mailing the Company's proposals that day. Reynolds received the proposals the morning of the July 12 meeting. The Union again made arrangements at the hotel for the meeting scheduled to begin at 6:30 p.m. While waiting for Contaldi, Reynolds saw Burke, who maintains a room at the hotel, and Burke asked Reynolds what he was doing there. Reynolds told him he was waiting for Contaldi. Burke indicated that he had information that Contaldi was not coming because he normally called him before he came to Terre Haute and had apparently not called Burke. Burke then told Reynolds that he would come down and negotiate with them. However, Burke got down to the meeting room around 8 p.m. At the start of the meeting Reynolds gave Burke a copy of the proposals he had received from Contaldi and commented that he felt they were incomplete in that some of the articles were supposed to have contained attachments and they did not. Reynolds asked about items such as wages, a health and retirement plan, the scope of the agreement, job bidding, and others. Burke indicated that he saw no problem with the Company's proposals as they were and was ready to sign them as the contract. This meeting lasted 30 minutes. Reynolds thereafter did talk with Contaldi on or about July 16, 1982. In that phone conversation Reynolds informed him of the proposals he felt were incomplete and said that he needed more detailed ones on those issues. At the time of this hearing nothing had been resolved as to the incomplete proposals nor had the Union received any additional proposals.

In November 1981, after the Respondent had recognized the Union and was preparing or was negotiating a collective-bargaining contract, the Respondent unilaterally put into effect several beneficial changes which were within the perimeters of the subject matter being negotiated with the Union. In mid-November the Company provided its employees a lunch facility comprised of a

trailer with a table and a heater. There had been no such facility before the trailer and the employees ate lunch wherever they could such as in their cars or in the open. In December the Company paid a Christmas bonus of $250 to each employee. Prior bonuses at Christmas were $500. In January, pay raises were granted to many employees and an internal job bidding procedure was implemented as was a new safety training program. Neither the job bidding procedure nor the safety program had previously existed. In February 1982, the Respondent constructed a shower or washhouse for its employees.

V. THE 8(A)(1) VIOLATIONS

The Union's initial effort in early September 1981 to acquire representation of the Respondent's employees at the Linton facility was initially rebuffed by Burke. After the Union met with the Respondent's employees and filed a petition for certification as the Respondent's employees' representative, the Respondent agreed that it would recognize the Union and proceed to negotiate a contract.

During Reynolds' visit to the Linton facility on September 9, he was observed by an employee, Lindon Moss. Subsequently, Moss asked Superintendent Young why Reynolds was at the mine. Young told Moss that Reynolds was there to organize the employees at the Linton facility. Young stated that the Union "even knew where he lived and it would be just like them to blow up his house because that is how they operate." Young also told Moss that the Union "was a bunch of thugs, common criminals and the next time they came out to the mine, he, Young, would offer them $20 and they would leave them alone."

On or about September 13, employee Garyl Griffith spoke with union organizer Dean Alumbaugh about the Union. Alumbaugh told Griffith the procedure to follow in getting the Union in at the mine and gave him authorization cards to distribute to the employees for signatures. Griffith signed a card that day. The following day, Griffith spoke with employees about the Union while riding to work with employees Donald Cotton and Wayne Jeffers and continued to talk with employees about the Union until his discharge.

On or about September 14, 1981, Cotton had a conversation with Young. During that conversation, Cotton told Young that the employees were interested in getting a union in at Linton and that Young had better talk to them. Young told Cotton that they did not need a union at Linton and if they got one the mine would be closed down. On the same day at the end of the first shift about 3:30 p.m., Young called a meeting of all the employees who then comprised the first and second shift. Prior to the meeting, Young gave Griffith money to purchase a case of beer which the employees drank during the meeting. At the meeting Young stated that a new insurance program was going to be instituted and that the Company was going to pay a bonus consisting of 20 cents per ton of coal produced each month which was to be distributed among the employees. The first bonus payment was made to employees on October 15. Sometime in September or October Young told Griffith that if the Union got in at Linton he would tear the mine down, sell it, and go into a different business. Around the same time, Foreman Chuck Dillon told employee Moss that it looked like Dillon's pit crew was in favor of a union. Dillon told Moss that in that event the Company would load up the wash plant and move it. Moss told Dillon that Griffith wanted a union very bad and was one of its biggest supporters.

On Sunday, October 25, as hereafter stated, a union meeting was held at a restaurant where the Union obtained authorization cards from a majority of the Respondent's employees. The following Monday, Griffith was discharged, allegedly for poor work performance and attendance.

In addition to the bonus and promise of a program of insurance, the Respondent paid a Christmas bonus to its employees and gave some of its employees a 50 cent to $1 raise in January 1982. In addition to the foregoing, a washhouse was built and therein was provided a shower stall, toilet, and sink facilities which prior to the contract with the Union the employees did not enjoy. An eating facility was also added comprised of a trailer with a picnic table and a heater. The Company also instituted a safety training program for the employees. All of these changes involving the working conditions at the Linton plant were put into effect prior to and during the time that the Union was exerting efforts for recognition and negotiating for a contract.

VI. THE 8(A)(3) VIOLATION

The discharge of Garyl Griffith took place on the morning of October 26, the day after the employees' union meeting at which the employees signed authorization cards for the Union. On that morning Griffith, who was late for work, was taken to Young's office by Dillon in order to see what assignment Young had for Griffith. At Young's office, Young told Griffith that he was wasting his time looking for something to do because he was fired. When Griffith asked Young why he was terminated Young said he had "f——" up every piece of equipment he had ever used, and had a lousy attitude as well as having the "worst showup record" of anybody who had worked for Great Lakes. Young also told Griffith that he had a hundred reasons documented why he could fire him and even if Griffith took the case to court he was not smart enough to convince anybody that Young was wrong for terminating him. Griffith later told Reynolds that he had been discharged. Reynolds called Young intending to ask for union recognition in view of Griffith's firing and the acquisition by the Union of a majority of employee cards. Reynolds told Young that the Union represented a majority of its employees and asked for recognition. Young refused saying that he did not believe that the Union had a majority and, in refusing Reynolds' offer to verify the majority status of the Union, Young told Reynolds, "Hell no, I'll fight you all the way."

Garyl Griffith had been employed by the Respondent prior to his employment at the Linton mine in June 1981, having previously worked for the Respondent at its Blackhawk mine. Griffith acknowledged that he quit that employment "before he got fired." Griffith also acknowl-

edged that he performed poorly at Blackhawk and told the mine superintendent at the time of quitting that he would "rather party than work." When Griffith was rehired at the Linton facility, Young advised him that a repeat performance of his conduct such as was exhibited while he worked at Blackhawk would not be acceptable. Young's evaluation of Griffith's work at the Linton facility was that Griffith was lazy, did not perform his work well, slipped into old habits of coming to work late, and argued with supervisors. He was also careless in the operation of the Company's machinery and in general was a poor employee. Griffith testified that he "needled" Young about the Union on frequent occasions. He acknowledged that such "needling" took place at the Blackhawk mine and in September and October 1981 at Linton. When interrogated about his characterization of his language with Young as "needling" Griffith advised that he "ribbed" Young about the Union. Griffith testified, "I ribbed him about the Union. I'd say, 'Oh, if we had a Union, I wouldn't have to work in this mud' or 'Boy, if I was in the Union, I wouldn't have to run this drill with the windows beat out of it and all this other crap' and 'Boy, if I was in the Union, I sure wouldn't have to come up here and beg you to let me off to a funeral' and stuff like that, you know." Griffith acknowledged that he did not appreciate Young telling him what to do.

Young charged Griffith with negligent maintenance and operation of the company equipment. On one incident Young stated that Griffith failed to change the air and fuel filters on a scraper which he operated which resulted in the expensive attendance of a mechanic. He also cited an incident where Griffith put the wrong type of oil in the scraper. Griffith stated that he was told by Young to put 30-weight oil into the scraper and in another incident Griffith allegedly caused damage to a drill. Griffith maintained that the damage to the drill was because of its poor condition and not because of his operation. After Griffith was relieved from his duties of operating this drill, similar problems were experienced by his successor operator on the drill.

On Friday, October 23, Griffith was excused from working during the afternoon because of a lack of things to do. He left the mine facility and went to lunch. After lunch he returned to the mine and went to Young's office where he gave Young a can of beer. At this time, Young made no mention of any significance about the tender of the can of beer. The next day, Young found empty beer cans in the vicinity of the dragline and allegedly presumed that the dragline crew had been given beer by Griffith. On Monday, October 26, Young discharged Griffith for tardiness, absenteeism, poor workmanship, and violation of his "no-alcoholic beverage" rule. Young stated that the beer incident of Friday, October 23, was "the straw that broke the camel's back." On that day the office secretary asked Young what she should do with the can of beer which was in his office. He told her to put it in the coke machine as "evidence" in the event Griffith contested his discharge. At the time of the offer of the beer to Young by Griffith, Young said nothing in the way of a reproach to Griffith. Young testified that on October 26, the date of Griffith's discharge, he had no knowledge of Griffith's activities with the union campaign.

VII. DISCUSSION AND CONCLUSIONS

A. *Respondent's Refusal to Bargain with the Union*

The General Counsel has alleged that the Respondent is guilty of violating Section 8(a)(5) and Section 8(d) of the Act. Section 8(a)(5) and Section 8(d) provide as follows:

> (a) It shall be an unfair labor practice for an employer:
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).
>
> . . . . .
>
> (d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder . . . .

These sections of the Act require the parties to such negotiating proceedings to engage therein with "an open and fair mind, and a sincere purpose to find a basis of agreement." *NLRB v. A. W. Thompson, Inc.*, 449 F.2d 1333 (5th Cir. 1971). The duty to bargain in good faith is not satisfied by "'surface bargaining' or 'shadow boxing to a draw,' or 'giving the Union a runaround while purporting to be meeting with the Union for the purpose of collective bargaining.'" *NLRB v. Herman Sausage Co.*, 275 F.2d 229 (5th Cir. 1960). The contention of the Respondent in the face of the evidence in this record is ludicrous. The Respondent contends that it bargained in good faith; yet, a study of the record clearly shows that the Respondent, while scheduling several bargaining sessions, constantly, for reasons sometimes unclear, or completely absent, canceled the meetings. It is quite apparent that the Respondent's bargaining representative, Contaldi, made himself unavailable at the designated meeting sites and even at his office located in Los Angeles, California. The record in this case even suggests that Contaldi was selected to bargain for the Respondent solely because of his distance from the locale of the bargaining table. There is no question that from November 4, the date on which the agreement to recognize the Union and bargain with it was made between the parties, the duty to bargain in good faith toward the acquisition of a labor contract rested upon both the Union and the Respondent. All that can be said was accomplished over the period of time from November 4 until the day of this hearing was that the parties exchanged proposed contracts. At the inception of the dialogue between the Union and the Respondent it is apparent that the acquisition by the Union of representation cards from a majority of the Respondent's employees, followed by the discharge of Griffith and the filing of a petition with the

National Labor Relations Board for certification of the Union as the bargaining representative, prompted the Respondent to agree that the Union would be the exclusive representative of its employees and that it, therefore, would commence subsequently to negotiate for a contract. The Respondent specifically asked the Union to withdraw its petition as a result and as a condition of the Respondent's agreement of November 4. An initial meeting subsequent to the November 4 agreement was held on December 2. From that date until the date of the hearing, little, if any, meaningful negotiation was conducted. Delays were constant and at the insistence of the Respondent. Contaldi did not attend previously arranged sessions and almost always advised Reynolds of his unavailability within 1 or 2 days of the set meeting. Frequent occasions arose when Reynolds could not even reach Contaldi to confirm set dates or to arrange rescheduling of negotiating dates. What negotiations were discussed were always responded to by Contaldi that it would be necessary for him to discuss the matter with Burke prior to coming to any agreement. It appears from the record that little, if any, discussion with Burke was ever had and no pursuit of the issues was ever conducted. The request by the Union for documents such as the seniority list of the Respondent and the Respondent's proposals on the contract and portions thereof were delayed in transmission to the Union until approximately February 11 and April 22, 1982, respectively. Such delays finally prompted the Union to file the instant action charging that the Company was not negotiating in good faith. After the filing of the complaint and about April 12, almost 2 months without contact between the parties, Contaldi called Reynolds telling him that since the hearing was rapidly approaching he wanted to negotiate and get the issues resolved. He suggested an April 20 meeting. On April 20 Contaldi called and again said he would not be in but would be able to appear on April 27. On April 27, Contaldi met with Reynolds. At that time, Contaldi presented Reynolds with the Company's contract proposals which were essentially the same ones presented to the Union at the first meeting on November 4. At the April 27 meeting, nothing in the way of progress was made between the parties since Contaldi was busy making and returning phone calls and not conducting negotiations with Reynolds. Again in early May, the Respondent requested another postponement of the hearing.

The continuance was denied and the hearing moved to May 24. Contaldi called Reynolds on May 14, and indicated he wished to negotiate before the hearing. A meeting took place on May 20 and the subjects of wages, pension fund, holidays, vacations, etc., were addressed; however, Contaldi's response to most of these issues was that he would get back to the Union on the proposals. The meeting ended with an agreement to get back to the Union on June 22 with the Company's proposals. Reynolds was unable to reach Contaldi on June 2, and even subsequently while the hearing was pending the Respondent continued to break scheduled meeting dates with the result that, at the time of the commencement of the subject hearing, the Respondent was continuing its dilatory conduct and effectively delaying the progression of a meaningful bargaining procedure.

Contaldi contended that he advised Reynolds that the Respondent was not financially secure and they needed 6 months before an agreement could be worked out and that he also told Reynolds, "We cannot begin to seriously negotiate a contract until we know we have a company because it becomes very impractical if we are out of business."

A study of the scheduled bargaining meetings discloses that 17 meetings were scheduled, of which the Respondent attended only 2. These meetings were spread over an 8-month period and the total amount of bargaining time was approximately 5 hours. No explanation was made by Contaldi as to why he failed to attend the scheduled meetings. An appropriate characterization of this conduct was spelled out in *NLRB v. Cable Vision, Inc.*, 660 F.2d 1, 4 (1st Cir. 1981), where there the court said:

> While an attitude of openmindedness is a hallmark of good faith bargaining and should be encouraged by both the Board and the courts, the mere statement that a party will "study" and "consider" proposals, repeated *ad infinitum* and combined with other evidence of deliberate delay, gives the impression of a party which is attempting to avoid rather than to induce agreement.

The financial instability of the Respondent, if a fact, is not a factor supporting dilatory conduct in engaging in negotiations designed to reach a contract. The financial status of the company in this and all such negotiations is a factor to be considered, not one which will excuse such gross dilatory conduct as exhibited by the Respondent here. It is not insignificant to note that during the period that the Respondent and the Union were ostensibly "at the bargaining table" the Respondent gave wage increases and a Christmas bonus to its employees and unilaterally provided other benefits. Such benefits were the subject of the negotiations between the Union and the Respondent and to usurp the negotiations by unilateral action on the part of the Respondent evidences a lack of intent to reach agreement with the Union in a reasonable time and manner. It would appear that the Respondent engaged itself in dealings with its employees with total disregard to its agreement that the Union was the exclusive representative of the employees in such matters. It would appear from the evidence in this case that, except for the filing by the Union of a petiton for certification with the Board, the Respondent would not have signed the November 4 agreement. Having been forced to acknowledge the Union and avoid a certification procedure because of the filing of the Union's petition, it then took the tack of delay to avoid any meaningful negotiations between the Union and the Respondent. The operations of the Respondent at the Linton site are by their nature limited. It is conceivable that the conduct of the Respondent may effectively delay the acquisition of a labor contract until such time as the operations at the Linton facility would have exhausted the coal supply. For those reasons and in view of the facts above stated, I find that the Respondent has failed to bargain with the

Union in good faith and that in so doing it has violated the provisions of Section 8(a)(5) of the Act.

B. *The Respondent's Union Animus and the Discharge of Griffith*

The evidence as stated heretofore supports the allegation that the Respondent through Foremen Young and Dillon clearly conveyed the intention to close the Linton operation in the event the Union was successful in its campaign. The testimony of the witnesses in this regard stands uncontradicted by both Dillon and Young. Such statements constitute a direct interference with an employee's right under Section 7 of the Act and constitute a violation of Section 8(a)(1) of the Act. *Custom Trim Products*, 255 NLRB 787 (1981). The statement of Young that it would be futile to attempt to unionize the Linton facility clearly suggested that in the event the Union succeeded in its efforts to represent the employees no contract would be forthcoming. Not only is this consistent with the attitude of Young regarding the Union but it was certainly borne out by the subsequent conduct of the Respondent in its negotiations with the Union even after acknowledging its exclusive right to represent the employees. Young's statement in this regard was not only a violation of Section 8(a)(1) of the Act but it was a prophetic truth as manifested by the dilatory conduct of the Respondent at the contract negotiations. Further, the conduct of the Respondent in promising an insurance program to the employees which had not existed previously and the institution of a coal production bonus for the employees were benefits intended to deflate the enthusiasm for a change in the relationship between the Respondent and its employees through the efforts of the Union.

It is further clear from the evidence that the Respondent was aware of the Union's efforts to organize its employees. Respondent had met with the union personnel in August 1981 when the Linton premises were visited by Reynolds. Reynolds requested recognition of the Union and failing to obtain it began to meet with the employees with the intent to organize the union campaign.

The recognition of the Union and the agreement to negotiate entered into on November 4 created a different aura and set of circumstances in the relationship of the Respondent and its employees. As of November 4, the Respondent's employees were represented exclusively by the Union in matters concerning wages, hours, and other terms and conditions of employment; therefore, it is difficult to conclude that the actions of the Respondent subsequent to November 4, 1981, were violations of Section 8(a)(1). They were, and as heretofore has been determined, violations of Section 8(a)(5), since the matters comprising those benefits were subjects of negotiations between the Union and the Respondent. Although it is recognized that the granting of the benefits such as the pay increase, Christmas bonus, providing of a luncheon facility and a washhouse are consistent with the conduct of the Respondent prior to November 4, 1981, they cannot be said to have interfered with the employees' rights under Section 7 since the Union obtained the exclusive representation rights of these employees on November 4, 1981. They do stand, however, in support of the findings herein made that the Respondent has not acted in good faith in its relationships with its employees and those employees' rights under Section 7. Such conduct establishes that union animus was the prevailing aura surrounding the relationship of the employees, their Union, and the Respondent since the inception of the employees' efforts to obtain a collective-bargaining agreement through their Union.

In such an atmosphere, the circumstances leading up to and constituting the discharge of Garyl Griffith enables the observer to discern the true motive of the Respondent. Griffith was in fact a leader in the union movement at the Respondent's Linton facility. While others were also proponents of union representation, Griffith had clearly made his position known to Young during his years of employment with the Respondent. While the "needling" of Young by Griffith on union matters is not deemed to be protected activity, it was clearly a source of knowledge to Young that Griffith was prounion. Even more significant is the fact that, although one may conclude that Griffith was, at best, a marginal employee, no action was taken by the Respondent against him until the day after the Union advised Young that it had a majority of its employees within the union campaign. Young attributed Griffith's work record in regard to tardiness and absenteeism as his reason for discharging him. When confronted with the attendance record of Griffith, Young acknowledged that he had not studied it prior to discharging Griffith and that his attendance record was not such that a discharge should be based upon that factor. Griffith's alleged tendency to damage company equipment which he operated was a circumstance which did not cause Young to take any action against Griffith at the time. The record indicates that the damage to the equipment operated by Griffith was not exclusively the fault of Griffith but in some cases was participated in by Young and attributable to the mechanical condition of the equipment. Notwithstanding the validity of the factors relied on by Young to create the aura of a "poor employee" the significant and telling factor is the time relationship between the acquisition by the Union of a majority of the Respondent's employees' support and the discharge of Griffith. I reject totally the contention that Young did not know that Griffith was a union advocate. The proffer of such defense in itself suggests a fabrication of the reasons for the discharge. Young contends that the incident regarding the can of beer on October 23 was the "straw that broke the camel's back," yet the testimony of the secretary establishes that Young had clearly intended to use the episode, if it became necessary, to support the discharge of Griffith. He did not admonish Griffith at the time of proffering the can of beer but rather he placed it in his "book of evidence" to support his discharge of Griffith.

The Respondent, through Young, had ample knowledge of Griffith's activities. Hostility toward the Union was clearly evidenced by the statements of Young and the several unilateral actions taken in disregard of the Union's campaign.

The Respondent, through Young, contends that the reason for the discharge of Griffith was not in any way connected to Griffith's union activities.

However, Young's testimony, which I found to be frequently evasive and often unresponsive, is characterized as that of a witness who chose to be less than candid in his contribution to the evidence in this case. His denial of scienter regarding Griffith's union activities and his attempt to include among the reasons for Griffith's discharge his attendance record are only two of the factors tending to repute the position of Young that Griffith was fired because he was a "poor employee." The most significant piece of evidence, although circumstantial, remains the spontaneity of Griffith's discharge. On October 25, the Union acquired the support of a majority of the employees of the Respondent and Griffith was discharged on October 26. I am compelled to conclude that the Respondent's tolerance of what may be considered a poor employment record of Griffith did not evaporate with the beer incident on Friday, October 23, but did give Young the opportunity to rid the Respondent of a union activist when it became apparent that the union campaign was progressing in a positive manner. In accordance with the foregoing, I find that the discharge of Daryl Griffith violated his rights under Section 7 of the Act and the Respondent has thereby violated Section 8(a)(3) of the Act.

CONCLUSIONS OF LAW

1. Since November 4, 1981, and at all times thereafter, the Union was and continues to be the lawful and exclusive bargaining representative for the purpose of collective bargaining for the nonsupervisor employees excluding office personnel of the Respondent.

2. The Respondent has failed to bargain with the Union in good faith after November 4, 1981, by failing to be present through its bargaining agent at previously scheduled bargaining sessions without good or sufficient reason or excuse and by making unilateral changes in wages and other terms and conditions of employment from and after November 4, 1981, and thus has violated Section 8(a)(5) of the Act.

3. The Respondent has promised to, and has, put into effect several benefits for its employees having the effect of interfering with said employees' rights under Section 7 in violation of Section 8(a)(1) of the Act.

4. The Respondent has discharged Daryl Griffith from its employ because of the exercise of his rights under Section 7 of the Act in violation of Section 8(a)(3) of the Act.

5. The violations above recited are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it is hereby recommended that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

[Recommended Order omitted from publication.]